

**ORDER**  
**NOTICE OF FILING DEFICIENCY**

July 23, 2019

Mr. Freddy Martinez  
DEPT MR 76547  
411A Highland Avenue  
Somerville, MA 02144

**Re:    Martinez v. Bensalem Township Police Department**  
**Docket No. 2019-1209**

Dear Mr. Martinez:

The Office of Open Records has received correspondence from you indicating that you wish to file an appeal of an agency's denial of a Right-to-Know Law request. In order to review the agency's denial of your request for records, the record on appeal is required to include both the request and the agency's response. *See* 65 P.S. § 67.1303(b). A review of your correspondence reveals that the required item(s) indicated below was/were not included with your correspondence:

☐ Request

☒ Complete Agency Response

In order to cure this deficiency in the appeal, **you are required to file the above document(s) that were not included with the appeal by July 30, 2019**, within seven (7) calendar days of the date of the record opened in this appeal. In addition, you are required to serve a copy of the document(s) upon the agency from which you requested the records.

**FAILURE TO FILE THE REQUIRED DOCUMENT(S) WILL RESULT IN YOUR APPEAL BEING DISMISSED.**

Respectfully yours,

/s/ Magdalene Zeppos

Magdalene Zeppos, Esq.  
Attorney

cc:    Bensalem Township Police Department's Open Records Officer, Lt. Keith Christie



July 23, 2019

**Via Email Only:**

Mr. Freddy Martinez  
DEPT MR 76547  
411A Highland Avenue  
Somerville, MA 02144  
76547-99068087@requests.muckrock.com

**Via Email Only:**

Lt. Keith Christie  
Agency Open Records Officer  
Bensalem Township Police Department  
2400 Byberry Road  
Bensalem, PA 19020  
kchristie@bensalempa.gov

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2019-1209

Dear Parties:

**Please review this information carefully as it affects your legal rights.**

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, *et seq.* on **July 22, 2019**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR's Final Determination is currently due on **August 21, 2019**.

**OOR Mediation:** This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

**Note to Parties:** Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency's position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR's website.

**Submissions to OOR:** Both parties may submit information and legal argument to support their positions by **11:59:59 p.m. on August 1, 2019**. The record closing date is seven (7) business days from the date of this letter unless the proceedings have been stayed for the

parties to submit a completed mediation agreement form, then the record will remain open for seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

**Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal.** Information shared with the OOR that is not also shared with all parties will not be considered.

**Agency Must Notify Third Parties:** If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

**Law Enforcement Records of Local Agencies:** District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

**Public Record Notice:** All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR’s Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR’s website and searchable on-line.

If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please email the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson  
Executive Director

Enc.: Assigned Appeals Officer contact information  
Entire appeal as filed with OOR



# pennsylvania

OFFICE OF OPEN RECORDS

**APPEALS OFFICER:**

**Magdalene Zeppos, Esq.**

**CONTACT INFORMATION:**

Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**FACSIMILE:**

(717) 425-5343

**EMAIL:**

mzeppos@pa.gov

**Preferred method of contact and  
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

Record at issue: \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**



MuckRock News  
DEPT MR 76547  
411A Highland Ave  
Somerville, MA 02144-2516  
76547-99068087@requests.muckrock.com

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## RTK APPEAL

RECEIVED

JUL 22 2019

OFFICE OF OPEN RECORDS

Executive Director, Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17126-0333

July 16, 2019

This is a follow up to a previous request:

----- I am formally appealing this denial under the Right to Know. The denial letter sent by the records office is that there are "no responsive records" and at the same "the records are not ours". -----

However, under the Right to Know, the agency does not raise that they are not in possession of the record nor do they assert that the records are "privileged" or "confidential". They do not state they are not public records under RTK. They also do not assert the information's "(2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information." Furthermore, they do not assert that the records are a "(b)Requests for trade secrets" and have not provided any such "written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information".

Therefore, I assert that they agency has waived their ability to exempt the records under the Right to Know act.

Freddy Martinez

Filed via MuckRock.com  
E-mail (Preferred): 76547-99068087@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News  
DEPT MR 76547  
411A Highland Ave  
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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On July 4, 2019:

Subject: RE: Pennsylvania Right to Know Act Request: Bensalem Township PD's IACP Presentation  
Mr. Martinez,

MuckRock News  
DEPT MR 76547  
411A Highland Ave  
Somerville, MA 02144-2516  
76547-99068087@requests.muckrock.com

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Please see attached RTK Response. Thank You.

On July 3, 2019:

Subject: Pennsylvania Right to Know Act Request: Bensalem Township PD's IACP Presentation  
To Whom It May Concern:

Pursuant to the Pennsylvania Right to Know Act, I hereby request the following records:

- The slides from the presentation from the talk given by Deputy Chief William McVey on May 20, 2019 at the IACP Tech conference. I am also seeking the presentation with the full notes that may accompany the slides.

For reference, the talk was about the use of license plate readers, face recognition, and other technologies on a school campus. This program was also described as the "Early Warning Detection System."

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter.

I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Freddy Martinez

Filed via MuckRock.com  
E-mail (Preferred): 76547-99068087@requests.muckrock.com

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